

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

JOEL DEAN BISHOP	§	
VS.	§	CIVIL ACTION NO. 1:06-CV-58
UNITED STATES OF AMERICA	§	

MEMORANDUM ORDER OVERRULING MOVANT’S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Movant Joel Dean Bishop, a federal prisoner, proceeding *pro se*, filed this motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.

The Court ordered that this matter be referred to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends denying the motion.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Movant filed objections to the magistrate judge's Report and Recommendation.

The Court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the Court concludes the objections are without merit. The magistrate judge correctly concluded that movant's ineffective assistance of counsel claims were not cognizable on collateral review because they were raised and decided on direct appeal. *See United States v. Kalish*, 780 F.2d 506, 508 (5th Cir. 1986), *cert. denied*, 476 U.S. 1118 (1986). In addition, movant is not entitled to relief on the merits of those

claims. Movant contends that his attorney failed to locate witnesses who would have testified that he was innocent of the offense. In light of the evidence produced at trial, particularly movant's judicial confession from the state court proceedings, there is not a reasonable probability that the outcome of the trial would have been different if the witnesses had testified.

ORDER

Accordingly, movant's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

So **ORDERED** and **SIGNED** this **23** day of **May, 2006**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge